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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,870	12/03/1999	SUJAL PATEL	REALNET.066A	4345

20995 7590 11/05/2002

KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

COULTER, KENNETH R

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. 09/454,870	Applicant(s) Patel et al.
Examiner Kenneth R. Coulter	Art Unit 2141



— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on \_\_\_\_\_

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1935 C.D. 11; 453 O.G. 213.

4)  Claim(s) 1-51 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-9, 14-35, 40-46, and 51 is/are rejected.

7)  Claim(s) 10-13, 36-39, and 47-50 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 44 recites the limitation "the network events" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 - 9, 14 - 35, 40 - 46 and 51 are rejected under 35 U.S.C. 102(b) as being disclosed by Waclawsky et al. (U.S. Pat. No. 5,197,127) (Expert System Method for Performing Window Protocol-Based Data Flow Analysis Within a Data Communication Network).

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4.1 Regarding claim 40, Waclawsky discloses a method of aggregating data packets, the method comprising:

determining, based upon the *load* of a server computer, whether to aggregate one or more of the data packets into an aggregated data packet (Abstract; col. 2, lines 16 - 20; col. 4, lines 11 - 31); and

transmitting the aggregated data packet to a client computer (Abstract; col. 2, lines 16 - 20; col. 4, lines 11 - 31).

4.2 Per claim 41, Waclawsky teaches that the data packets are not aggregated in an aggregated data packet larger than the size of a maximum transmission unit for any intermediary network device that is in the transmission path between the server computer and the client computer (col. 4, lines 2 - 31).

4.3 Regarding claim 42, Waclawsky does not explicitly disclose determining the server load comprises comparing the number of data packets that are overdue to the total number of data packets.

However, the Examiner hereby takes official notice that the detection of overdue packets is a commonplace tactic when optimizing data flow efficiency in a network.

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4.4 Per claim 43, Waclawsky teaches determining the server load comprises comparing the number of network events processed by a server program that is executing on the server computer due to exceeding a time out threshold to the total number of network events that the server program processes (Abstract; col. 2, lines 16 - 20; col. 4, lines 11 - 31).

4.5 Regarding claim 44, Waclawsky does not explicitly disclose that *network events* are selected from the group comprising: a play command, a pause command, a seek command, a ping command, and a re-send command.

However, the ping command is inherent in Waclawsky because the analysis and tracing of the network.

4.6 Per claim 45, Waclawsky teaches that the server load is based at least in part upon the actual transmission rate between the server computer and the client computer (Abstract; Fig. 13; col. 2, lines 16 - 20; col. 4, lines 11 - 31).

4.7 Regarding claim 46, Waclawsky discloses that the data packets are aggregated in an aggregated data packet until the size of the aggregated data packet exceeds a minimum threshold without exceeding a maximum threshold (Abstract; Fig. 13; col. 2, lines 16 - 20; col. 4, lines 11 - 31).

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4.8 Per claim 51, Waclawsky teaches that the size of the minimum threshold relates to a quality of presentation of the streamable data objects and the maximum threshold relates to a *maximum transmission unit* (Abstract; col. 2, lines 16 - 20; col. 4, lines 11 - 31).

4.9 Regarding claims 1 - 9, and 14 - 35, the rejection of claims 40 - 46 and 51 (paragraphs 4.1 - 4.8 above) under 35 USC 102(b) applies fully.

In addition, with regard to claims 14, 15, 16 and 23, 24, 25, Waclawsky does not explicitly disclose that the process of transmitting the streamable data objects from server to client comprises increasing the packet size of one or more data packets, increasing the number of channels that are used to transmit the streamable data objects, or either increasing or decreasing the frequency of transmission of one or more data packets.

The Examiner hereby takes official notice that these features are commonplace in the streamable multimedia art in order to increase the speed of transmission, and therefore do not represent patentably distinct features over the prior art.

#### *Allowable Subject Matter*

5. Claims 10 - 13, 36 - 39, and 47 - 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Coulter whose telephone number is (703) 305-8447.

KENNETH R. COULTER  
PRIMARY EXAMINER  
*Kenneth Coulter*

krc

November 1, 2002